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National Energy Board



Office national de l'énergie



File: 620-A000-9-1
19 June 1998

Mr. Robert B. Cohen
Vice President Law and Administration and Secretary
Express Pipeline Ltd.
Suite 2050 Bow Valley Square 2
205 - 5 Ave S.W.
Calgary, AB T2P 2V7

Dear Mr. Cohen:

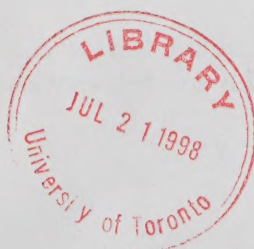
RE: Express Pipeline Ltd. Section 21 Application - Cost Recovery Regulations

On 19 January 1998, Express Pipeline Ltd. ("Express") filed an application under section 21 of the *National Energy Board Act* requesting a review of the decision of the National Energy Board ("the Board") to enact regulation SOR 97-271 adding Express to Schedule I, Part I of the *Cost Recovery Regulations* ("CRR"). On 27 February 1998 the Board advised that it would review its decision and on 16 March 1998 the Board received the submission of Express in respect of the review under section 21. The Board invited interested parties to intervene in the proceeding and received submissions from Amoco Canada Petroleum Company Ltd., Industrial Gas Users Association (IGUA), and Interprovincial Pipe Line Inc.

The Board has reviewed the cost recovery regulatory scheme and the representations of all parties and, for the reasons set out below, has determined that the original decision to classify Express under Part I of Schedule I of the CRR should not be varied.

The criteria for determining how a company will be treated for the purposes of cost recovery have always been based on size, throughput and cost of service, not on the expected regulatory workload generated by the company. The table set out in Attachment "A" to this letter demonstrates that Express' size and throughput are more comparable to companies in Part I of the Schedule than those in Part II. For instance, Express' forecasted delivery for 1997 was significantly more than that of IPL (NW), a Part I company. In 1998, Cochin and IPL(NW) are forecasted to ship approximately $5738 \times 10^3 \text{ m}^3$ and $1822 \times 10^3 \text{ m}^3$, respectively. Both forecasts are less than Express' projected shipments of $7712 \times 10^3 \text{ m}^3$. Over the life of the Express pipeline, it is forecasted to ship $10,001 \times 10^3 \text{ m}^3$ per year. This forecast would place it in the top three oil pipelines by annual throughput.

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Express has a significantly higher throughput rate than all but two of the companies in the Group 2 category. The exceptions are Montreal Pipe Line Limited and Aurora Pipe Line Company, which, in 1990, projected an annual throughput of 4772 10^3m^3 and 3650 10^3m^3 , respectively. It is important to note, however, that revenues, rate base, and cost of service for these companies are less than 40% of that of Express. Based on the foregoing, an overall evaluation of the correct placement of Express therefore confirms that it appropriately belongs in Part I of Schedule I.

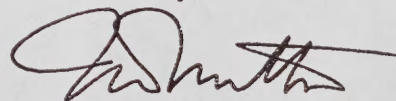
The Board has taken into consideration Express' submission that the burden of cost recovery will fall on its shareholders. The Board notes, however, that the tolls were set by Express before several key regulatory decisions were made, including treatment for cost recovery and status as a Group 1 or Group 2 company. Express submits that the tolls were set using a variety of cost assumptions. One of the assumptions Express says that it made was that it would be treated as a Schedule I, Part II company. Yet there was no guarantee that this is what the Board would eventually decide.

In the OH-1-95 proceeding, Board IR 79, issued to Express prior to the hearing, advised that there was no automatic correlation between Group 2 status and Schedule I, Part II status for cost recovery purposes. Even if there had been a rule that Group 2 companies were automatically placed on Part II of the Schedule for cost recovery, Express was not certain that it would achieve Group 2 status. That question was itself at issue in the OH-1-95 proceeding. The Board cannot be bound to make decisions simply on the basis that the company made certain other assumptions as to how it would be classified for cost recovery purposes.

In the view of the Board, the placement of Express in Schedule I, Part I of the CRR is consistent with the principles of cost recovery. By size and throughput, Express clearly belongs in Part I. Market-based tolls do not preclude a pipeline company from flowing through the expenses associated with cost recovery to its shippers. It is up to the company, however, to arrange its contracts in such a way that this flow through may be effected. If a company must make financial commitments before regulatory decisions have been made, it is open to the company to provide for such contingencies in its agreements with shippers. If it chooses not to do so, it must assume those risks itself.

The foregoing constitutes the Board's reasons for declining to vary its decision to enact Regulation SOR/ 97-271, adding Express to Schedule I, Part I of the CRR.

Yours truly,



Michel L. Mantha
Secretary

Attach.

cc: Parties to the Express Pipeline Ltd. Review & Complaint
All companies subject to NEB cost recovery (L03, L10, L13)

SCHEDULE I PART I COMPANIES' ESTIMATED DELIVERIES AND CHARGES

COMPANIES	FORECAST DELIVERIES 1997 x 10 ³ m ³	FORECAST DELIVERIES 1998 x10 ³ m ³	FORECAST CHARGE 1997 \$	FORECAST CHARGE 1998 \$	ESTIMATED ANNUAL DELIVERY IN OH-1-95 @ full cycle
Cochin	6,188.	5,738.	399,948.	380,419.	
Express	4,253. *	7,712.	274,883. *	510,793.	10,001 x10 ³ m ³
IPL	103,879.	107,894.	6,713,995.	7,152,079.	
IPL(NW)	1,901.	1,822.	122,867.	120,645.	
Trans Mountain	13,797.	13,907.	891,739.	922,347.	
Trans Northern	9,400.	9,700.	607,549.	643,113.	
TOTAL	139,418.	146,773.	9,010,981.	9,729,396.	

* Unlike the other companies, Express has not been billed for 1997 yet since it was not listed in the regulations when the 1997 billing notices occurred in 1996. However, amounts owing for 1997 will be collected through an adjustment mechanism in its 1999 charges in accordance with the *Cost Recovery Regulations*.

